

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2003-018977

04/14/2006

HON. THOMAS DUNEVANT, III

CLERK OF THE COURT
S. Brown
Deputy

FILED: 04/19/2006

DANIEL BOWDEN

SCOTT M HARRIS

v.

G & I, I I I POSADA DEL ESTE L L C

W LLOYD BENNER

MINUTE ENTRY

Defendant's Motion for New Trial has been under advisement. The Court finds and rules as follows.

Defendant's Claim of Surprise

Defendant's claim of surprise, assuming arguendo that it has merit, was waived. Dr. Kates's answer to Plaintiff's counsel's hypothetical came on direct examination. Defense counsel could have objected either before the witness answered, or when he realized that the answer might lack foundation; he did not. Having allowed the question and answer, he could have cross-examined Dr. Kates about that opinion; he did not.

Defendant's Claim of Excessive Damages/Verdict not Justified by the Evidence or Contrary to Law

Plaintiff maintained throughout that he suffered permanent pain, so that claim was no surprise to Defendant. Dr. Kates had been disclosed as Plaintiff's witness well in advance of trial. His opinion as to the connection between the work injury and the continuing pain could have been inquired into during discovery. In short, ordinary prudence could have prevented any supposed surprise. Relief is therefore improper. *Kotsonaros v. State of Minnesota*, 79 Ariz. 368, 370-71 (1955).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2003-018977

04/14/2006

Defendant's other objections can be dealt with together. There is no reason to suppose that any of the jurors had personal preconceptions of this incident, or that they were confused by a case so factually uncomplicated. Defendant is thus asking the Court to find that their award of damages was motivated by passion rather than by the weight of the evidence. There is evidence in the record, even apart from Dr. Kates's testimony, from which the jury could have found that Plaintiff would suffer permanent pain from his injury. That the damages for this future pain far exceed Plaintiff's out-of-pocket expenses does not invalidate the award. While the jury award is substantial, the Court cannot say that the verdict is so outrageous as to shock the conscience in the legal sense.

Therefore, IT IS ORDERED denying Defendant's Motion for New Trial.